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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,030	03/15/2004	Jens Staack	042933/373952	6867
826	7590	11/13/2009	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			GONZALEZ, AMANCIO	
			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			11/13/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,030

Applicant(s)

STAACK, JENS

Examiner

AMANCIO GONZALEZ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-31, 33-38, 40, 42, 54-57, 59, 60, 63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-31, 33-38, 40, 42, 54-57, 59, 60, 63 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

In view of the Pre-Brief Appeal Conference decision on 08/26/2009, PROSECUTION IS HEREBY REOPENED. New ground of rejection applied as set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid. A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Dwayne D. Bost/
Supervisory Patent Examiner,
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Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 63 and 64 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 63 and 64 have not been presented in the original claims and the subject matter of each claim is directed to a computer program embodied on a computer readable storage medium for which no description appears in the invention specifications.

The applicant is invited to show where in the specification support is found for the referred claims.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 63 and 64** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 63 and 64 claim a computer-readable *medium* for which the specification does not provide a specific definition, therefore failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 63 and 64 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 63 and 64 claim a computer-readable *medium* for which the specification does not provide a specific definition, therefore not falling under statutory subject matter.

Disclosed Invention

The present application discloses initiation of a packet-based service in a public mobile communication system, especially a service that is commonly called the Push-to-talk-over-Cellular (PoC) service.

Claimed invention

The present application claims receiving, in a mobile terminal belonging to a communication group in a mobile communication system, a triggering message indicating the communication group and informing the mobile terminal of a packet-based service session of the communication group to be initiated; and

in response to the receiving, bringing the mobile terminal to a state allowing reception of packets from a packet data network belonging to the mobile communication system, to enable participation in the packet-based service session of the communication group, wherein

the receiving comprises receiving the triggering message so that the triggering message is receivable from the mobile communication system regardless of whether the mobile terminal is ready to participate in the packet-based service session, and

the triggering message indicates a starting time for the packet-based service session and the mobile terminal is brought to said state substantially at said starting time.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 26-29, 30, 31, 33-38, 40, 42, 54-57, 60, 63, and 64** are rejected under 35 U.S.C. 102(e) as being anticipated by Kundu et al. (US 20050239485 A1), hereafter "Kundu."

Consider **claim 26**. Kundu discloses:

receiving, in a mobile terminal belonging to a communication group in a mobile communication system, a triggering message indicating the communication group and informing the mobile terminal of a packet-based service session of the communication group to be initiated (**see paragraphs 0113: Kundu discusses where a mobile station originates a group call by dialing a Detection Point trigger code and group ID; paragraph 0171: Kundu discusses a terminating leg, e.g., a receiving mobile station, receiving a trigger to initiate a group voice session; paragraph 0033, where Kundu discusses using packet technology for PTT calls spanning across multiple Dispatch Services (DGs)); and**

in response to the receiving, bringing the mobile terminal to a state allowing reception of packets from a packet data network belonging to the mobile communication

system, to enable participation in the packet-based service session of the communication group **(see paragraph 0171: Kundu discusses that the group voice application for terminating handsets, e.g., receiving mobile stations, avoids unnecessary "alerting" to the user and does not wait for the user to "connect;" that instead, it plays a short duration tone while sending a "connect" automatically to the network, hence bringing the mobile terminal to a state allowing reception of packets from a packet data network belonging to the mobile communication system, to enable participation in the packet-based service session of the communication group –see paragraph 0033, where Kundu discusses using packet technology for PTT calls spanning across multiple Dispatch Services (DGs)), wherein**

the receiving comprises receiving the triggering message so that the triggering message is receivable from the mobile communication system regardless of whether the mobile terminal is ready to participate in the packet-based service session **(see paragraphs 0167 and 0168, where Kundu discusses that the group voice services can be introduced into a carrier's existing network independent of Radio Access Technology, i.e., GSM, CDMA, TDMA and future 3G access networks, having stated in paragraph 0033 using packet technology for PTT calls spanning across multiple Dispatch Services (DGs)), and**

the triggering message indicates a starting time for the packet-based service session and the mobile terminal is brought to said state substantially at said starting time **(see paragraph 0059, where Kundu discusses that when an origination**

trigger condition is met, the Dispatch Service (DG) can start setting up the terminating legs, e.g., receiving mobile station, parallel to the originating leg, originating mobile station, radio setup, thus giving faster group call setup, and hence the triggering message indicating a starting time for the packet-based service session –see paragraph 0033- and bringing the mobile terminal to said state substantially at said starting time).

Claims 33, 42, 57, 60, 63, and 64 are directed to the same subject matter as claim 26, therefore same rejection rationale applies.

Consider **claim 27**. Kundu teaches claim 26, and further discloses establishing a connection to the packet data network packet data connection (see paragraph 0033).

Consider **claims 28, 29, 35, and 36**. Kundu teaches claims 26, 27, 33, and 34, and further discloses mobile station registration (see 0034).

Consider **claims 30, 31, 37, and 38**. Kundu teaches claims 28, 29, 35, and 36, and further discloses push-to-talk over cellular (see the abstract and fig. 6 boxes 600, 602 and 606, where Kudu explicitly discusses PTT in a mobile phone).

Consider **claim 34**. Kundu teaches claim 33, and further discloses establishing connection for data transmission with a previously disconnected mobile terminal with respect to the packet data network (see paragraphs 0033, 0167, and 0168. In paragraph 0033, Kundu discusses using packet technology for PTT calls spanning across multiple Dispatch Services (DGs); in paragraphs 0167 and 0168 Kundu discusses that the group voice services can be introduced into a carrier's existing network independent of Radio Access Technology, i.e., GSM, CDMA, TDMA and future

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3G access networks, suggesting a circuit-switched network in which the mobile station are disconnected mobile with respect to the packet data network previous to PTT calls spanning across multiple Dispatch Services (DGs), which uses packet technology).

Consider claims **40 and 56**. Kundu teaches claims 33, and 42, and further discloses bringing a first mobile station –caller's MS- and a second –target MS- to another state (see paragraph 0059, where Kundu discusses that when an origination trigger condition is met, the Dispatch Service (DG) can start setting up the terminating legs, e.g., receiving mobile station, parallel to the originating leg, originating mobile station, hence bringing a first mobile station –caller's MS- and a second –target MS- to another state, e.g., to start a group communication session).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims **59 and 62** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kundu et al. (US 20050135348 A1), hereafter "Kundu," in view of Chen et al. (US 20040203770 A1), hereafter "Chen."

Consider claims **59 and 62**. Kundu teaches claims 42 and 60, but does not particularly refer to or disclose sending multimedia messages.

Chen, in related art, discloses sending multimedia messages (*multimedia read on data, voice, image, text, video, etc.* -see Chen: par. 0067).

A person of ordinary skill in art at the time the invention was obviously expected to have knowledge of sending multimedia messages in a PTT group communication session and have it applied for the purpose of enhancing versatility in mobile communication.

9. Claims **54 and 55** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kundu et al. (US 20050135348 A1), hereafter "Kundu," in view of Desai et al. (US 7277697 B2), hereafter "Desai."

Consider **claims 54 and 55**. Kundu teaches claims 26 and 33, but does not particularly refer to or disclose prompting a user for accepting a session invitation.

Desai, in related art, discloses prompting a user for accepting a session invitation (see col. 5 lines 27-32).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to further modify the invention of Kundu and have it include prompting a user for accepting a session invitation, as taught by Desai, thereby

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providing means for the purpose of establishing a communication with a group inviting participants in non-intrusive manner, as discussed by Desai (see col. 2 lines 14-16).

Conclusion

Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Hand-delivered responses should be brought to

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Amancio González, whose telephone number is (571) 270-1106. The Examiner can normally be reached on Monday-Thursday from 8:00am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dwayne Bost, can be reached at (571) 272-7023. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

AG/ag

October 31, 2009

/Dwayne D. Bost/
Supervisory Patent Examiner,
Art Unit 2617